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7 Attorneys for Plaintiff, King Pun Cheng

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 HANGZHOU GREAT STAR INDUSTRIAL CO.,  
14 LTD.; LOWE'S COMPANIES, INC.

15 Defendants.

Case No. 37-2016-00032613-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO HANGZHOU  
GREAT STAR INDUSTRIAL CO,  
LTD.**

Complaint Filed: September 19, 2016

17  
18 **1. Introduction**

19 **1.1 Parties**

20 This Consent Judgment is hereby entered into by and between Kingpun Cheng, as an  
21 individual and acting in the interest of the public, (hereinafter "Cheng") and Hangzhou Great Star  
22 Industrial Co., Ltd. (hereinafter "GREAT STAR"). GREAT STAR and Cheng shall be  
23 collectively referred to as the "Parties" and each of them as a "Party." Cheng is an individual  
24 residing in California who seeks to promote awareness of exposures to toxic chemicals and  
25 improve human health by reducing or eliminating hazardous substances contained in consumer  
26 products. GREAT STAR employs ten or more persons as required for purposes of Cal. Health &  
27 Safety Code §§ 25249.5 *et seq.* ("Proposition 65").  
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**1.2 General Allegations**

Cheng alleges that GREAT STAR offered for sale and sold in the State of California adjustable block plane hand tools with brass, including but not limited to “Kobalt Adjustable Block Plane,” UPC820909630470 containing lead and lead compounds, chemicals listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, and/or other reproductive harm, and that they did so without providing the warning Cheng alleges is required by Proposition 65. Adjustable block plane hand tools with brass are referred to herein as “Covered Products”.

**1.3 Notice of Violation**

On or about November 6, 2015 Cheng issued a 60 Day Notice of Violation to LF, LLC, LF, LLC dba Kobalt, Lowe’s Companies, Inc., Lowe’s Home Centers, LLC, and various public enforcement agencies pursuant to Health & Safety Code §25249.7(d) alleging that LF, LLC, LF, LLC dba Kobalt, Lowe’s Companies, Inc., and Lowe’s Home Centers, LLC were in violation of Proposition 65 for failing to warn California consumers that the Covered Products exposed them to lead (“November Notice”). Subsequently, on or about July 13, 2016, Cheng issued a Supplemental Notice 60 Day Notice of Violation to Hangzhou Great Star Industrial Co., Ltd. (“GREAT STAR”), Lowe’s Companies, Inc., Lowe’s Home Centers, LLC and various public enforcement agencies pursuant to Health & Safety Code §25249.7(d), alleging that GREAT STAR, Lowe’s Companies, Inc., and Lowe’s Home Centers, LLC were in violation of Proposition 65 for failing to warn California consumers that the Covered Products exposed them to lead (“Supplemental Notice”). The November Notice and the Supplemental Notice are referred to herein as “Notices”. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time after service of the Notice to them by Cheng.

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**1.4 Complaint**

On or about September 19, 2016 Cheng filed a Complaint against GREAT STAR for civil penalties and injunctive relief ("Complaint") in San Diego Superior Court, Case No. 37-2016-00032613-CU-NP-CTL.

The Complaint alleges, among other things, that GREAT STAR violated Proposition 65 by failing to give clear and reasonable warnings of exposure to lead and lead compounds from the Covered Products.

**1.5 Consent to Jurisdiction**

While otherwise disputed, for purposes of this Consent Judgment, the Parties consent that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over the named Defendant as to the acts alleged in the Complaint, that venue is proper in the County of San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the Notices, Complaint, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the prior conduct of the Parties or on the facts alleged in the Complaint or arising therefrom or related to.

**1.6 No Admission**

GREAT STAR denies the material, factual, and legal allegations contained in the Notices and Complaint, and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by GREAT STAR of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by GREAT STAR of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by GREAT STAR. However, this section shall not diminish or

1 otherwise affect the obligations, responsibilities and duties under this Consent Judgment.

2 Notwithstanding the allegations in the Notice, GREAT STAR maintains that it has not knowingly  
3 manufactured, or caused to be manufactured, or distributed the Product for sale in California in  
4 violation of Proposition 65.

5           1.7 For purposes of this Consent Judgment, the term “Effective Date” shall mean five  
6 (5) business days after Cheng’s counsel provides written notice to GREAT STAR’s counsel that  
7 the Motion to Approve the Consent Judgment has been granted by the Court.

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9           **2. Injunctive Relief**

10           Commencing on the Effective Date, GREAT STAR shall only sell, offer for sale, or  
11 distribute for sale in California, Covered Products that are either (a) reformulated pursuant to  
12 Section 2.1 or (b) include a warning as provided in Section 2.3.

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14           **2.1 Reformulation Option.**

15           The Covered Products shall be deemed to comply with Proposition 65 with regard to lead  
16 and lead compound, and be exempt from any Proposition 65 warning requirements for lead and  
17 lead compounds, if the exposed brass or other metal components that are part of the Covered  
18 Products meet the following criteria: the alloy from which the components are made shall have a  
19 lead content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). GREAT  
20 STAR may comply with the above requirements by relying on information obtained from its  
21 suppliers regarding the content of the alloy from which the components are made, provided such  
22 reliance is in good faith. Obtaining test results showing that the lead content is no more than  
23 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as  
24 distinguished from detection) of less than 100 ppm shall be deemed to establish good faith  
25 reliance. For purposes of this Consent Judgment, Covered Products in compliance with this  
26 standard are “Reformulated Products”.  
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1           2.2    **Warning Alternative.**

2           As an alternative to reformulating the Covered Products, commencing on the Effective  
3 Date, Covered Products that GREAT STAR ships for sale, sells or offers for sale in California  
4 that are not Reformulated Products as set forth in Section 2.1 above shall be accompanied by a  
5 clear and reasonable warning as described in Section 2.3 below.  
6

7           2.3    **Clear and Reasonable Warnings.**

8           Where required under Section 2.2 above, GREAT STAR shall provide Proposition 65  
9 warnings substantially as follows:

10           **WARNING:** This product contains lead, a chemical known to the State of California to  
11 cause cancer, birth defects or other reproductive harm.

12           OR

13           **WARNING:** This product contains chemicals known to the State of California to cause  
14 cancer, birth defects or other reproductive harm.  
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16           2.3.1   Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
17 GREAT STAR shall provide the warning language set forth in Section 2.3 either with the unit  
18 package of the Covered Products or affixed to the Covered Products. Such warning shall be  
19 prominently affixed to or printed on each Product's label or package or the Product itself. If  
20 printed on the label, the warning shall be contained in the same section that states other safety  
21 warnings, if any, concerning the use of the Product. GREAT STAR may continue to utilize, on an  
22 ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those  
23 set forth in Section 2.3 above, but only to the extent such packaging materials have already been  
24 printed within ninety days after the Effective Date.  
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26           2.3.2   The requirements for warnings, set forth in Section 2.3 above are imposed  
27 pursuant to the terms of this Consent Judgment. The Parties recognize that these are not the  
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1 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
2 and that they may or may not be appropriate in other circumstances.

3           2.3.3 If Proposition 65 warnings for lead or lead compounds or other specified  
4 chemicals should no longer be required by Proposition 65, GREAT STAR shall have no further  
5 warning obligations pursuant to this Consent Judgment. In the event that a change in the law  
6 requires modification of such warnings, GREAT STAR may cease to implement or may modify  
7 the warnings required under this Consent Judgment in compliance with the change in the law. In  
8 the event that the Office of Environmental Health Hazard Assessment promulgates one or more  
9 regulations requiring or permitting warning text and/or methods of transmission different than  
10 those set forth above, GREAT STAR shall be entitled to either use, at its discretion, such other  
11 warning text and/or method of transmission without being deemed in breach of this Consent  
12 Judgment, or continue to comply with the warning provisions in this Consent Judgment.

#### 15           2.4     **Products Manufactured Prior to the Effective Date**

16           Notwithstanding anything else in this Consent Judgment, Covered Products that were  
17 manufactured prior to the Effective Date shall be subject to the release of liability pursuant to  
18 section 5 of this Consent Judgment, without regard to when such Covered Products were, or are  
19 in the future, distributed or sold to customers. As a result, the obligations of GREAT STAR as set  
20 forth in this Consent Judgment, including but not limited to Section 2, do not apply to these  
21 products manufactured prior to the Effective Date.

### 23           3.     **Entry of Consent Judgment**

24           3.1     With regard to all claims that have been raised or which could be raised with  
25 respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products,  
26 GREAT STAR shall pay a civil penalty of \$1,000 pursuant to Health and Safety Code section  
27 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with  
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1 75% of these funds remitted to the State of California's Office of Environmental Health Hazard  
2 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Cheng, as provided by  
3 California Health & Safety Code § 25249.12(c)(1) and (d) and the instructions directly below.

### 4 3.2 Payment Procedures

5 GREAT STAR shall issue two separate checks for the penalty payment: (a) one check  
6 made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing  
7 75% of the total penalty (i.e., \$750); and (b) one check in an amount representing 25% of the total  
8 penalty (i.e., \$250) made payable directly to Cheng. GREAT STAR shall mail these payments  
9 within five (5) days after the Effective Date at which time such payments shall be mailed to the  
10 following addresses respectively:  
11

12 Proposition 65 Settlement Coordinator

13 California Department of Justice

14 1515 Clay Street, 20th Floor

15 Oakland, CA 94612-1413

16 Mr. Kingpun Cheng

17 C/O Sy and Smith, PC

18 11622 El Camino Real, Suite 100

19 San Diego, CA 92130

### 20 4. Reimbursement of Fees and Costs

21 The Parties reached an accord on the compensation due to Cheng and his counsel  
22 under the private attorney general doctrine and principles of contract law. Under these legal  
23 principles, GREAT STAR shall reimburse Cheng's counsel for fees and costs incurred as a result  
24 of investigating, bringing this matter to GREAT STAR's attention, and negotiating a settlement.  
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1 GREAT STAR shall pay Cheng's counsel \$20,000 for all attorneys' fees, expert and investigation  
2 fees, and related costs associated with this matter, the Notices and associated fees and costs.

3 GREAT STAR shall wire said monies or send a check payable to "Sy and Smith, PC" within five  
4 (5) days of the Effective Date. Sy and Smith, PC will provide GREAT STAR with wire  
5 instruction and tax identification information on or before the Effective Date if requested. Other  
6 than the payment required hereunder, each side is to bear its own attorneys' fees and costs.  
7

8 **5. Release of all Claims**

9 **5.1 Release of GREAT STAR and Downstream Customers, Retailers and Entities**

10 Cheng, acting on behalf of himself and in the public interest, releases GREAT STAR and  
11 their respective officers, directors, attorneys, representatives, shareholders, agents, and  
12 employees, sister and parent entities, successors, and assigns, and each entity to whom it directly  
13 or indirectly distributed or distributes or sold or sells the Covered Products including, but not  
14 limited to, their downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers  
15 (including, but not limited to, LF, LLC, LF, LLC dba Kobalt, Lowe's Companies, Inc., Lowe's  
16 Home Centers, LLC, their parent and all affiliates and subsidiaries thereof), their respective  
17 employees, agents and assigns, franchisees, dealers, customers, owners, purchasers, users, parent  
18 companies, corporate affiliates, subsidiaries, (collectively "Releasees") from all claims for  
19 violations of Proposition 65 up through the Effective Date, and consistent with the provisions of  
20 Section 2.4, above, based on exposure to lead and lead compounds from the Covered Products as  
21 set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes  
22 compliance with Proposition 65 with respect to exposures to lead from the Covered Products.  
23

24 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
25 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
26 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
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1 action and releases any other claims, cause of action, obligation, costs, expenses, attorneys' fees,  
2 damages, losses, liabilities, and demands that he could make against GREAT STAR or the  
3 Releasees with respect to violations of Proposition 65 based upon the Covered Products. The  
4 Parties acknowledge that the claims released above may include unknown claims, and with  
5 respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically waives  
6 any and all rights and benefits which he now has, or in the future may have, conferred by virtue of  
7 the provisions of Section 1542 of the California Civil Code, which provides as follows:  
8

9           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
11 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY  
12 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.  
13

14           Cheng acknowledges and understands the significance and consequences of this specific  
15 waiver of California Civil Code section 1542.

16           **5.2 GREAT STAR Release of Cheng**

17           GREAT STAR waives any and all claims against Cheng, his attorneys and other  
18 representatives, for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Cheng and his attorneys and other representatives in the course of investigating  
20 claims or otherwise seeking enforcement of Proposition 65 against it in this matter.  
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22           **6. Non-Disparagement**

23           The Parties agree to refrain from taking action or making statements, written, oral  
24 or through any form of social media, which disparage or defame the goodwill or reputation of the  
25 other Party.  
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1           **7. Court Approval**

2           This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)  
4 year after it has been fully executed by the Parties.  
5

6           **7. Severability and Merger**

7           If, subsequent to the execution of this Consent Judgment, any of the provisions of  
8 this document are held by a court to be unenforceable, the validity of the enforceable provisions  
9 remaining shall not be adversely affected.

10           This Consent Judgment contains the sole and entire agreement of the Parties and  
11 any and all prior negotiations and understandings related hereto shall be deemed to have been  
12 merged within it. No representations or terms of agreement other than those contained herein  
13 exist or have been made by any Party with respect to the other Party or the subject matter hereof.  
14

15           **8. Governing Law**

16           The terms of this Consent Judgment shall be governed by the laws of the State of  
17 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
18 reason of law generally, or as to the Covered Products, then GREAT STAR shall have no further  
19 obligations pursuant to this Consent Judgment with respect to the Covered Products to the extent  
20 the Covered Products are so affected.  
21

22           **9. Notices**

23           9.1 Unless specified herein, all correspondence and notices required to be provided  
24 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:  
25 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or  
26 (ii) overnight courier on any Party by the other Party at the following addresses:  
27

28           GREAT STAR:

1 James M. Mabon  
2 Law Office of James M. Mabon  
3 10800 Sikes Place, Suite 300  
4 Charlotte, NC 28277  
5 [jmabon@mabonlaw.com](mailto:jmabon@mabonlaw.com)

6 and

7 For Cheng:

8 Parker A. Smith  
9 Sy and Smith, PC  
10 11622 El Camino Real, Suite 100  
11 Del Mar, CA 92130  
12 [parker@sysmithlaw.com](mailto:parker@sysmithlaw.com)

13 Any Party, from time to time, may specify in writing by the means set forth above to the  
14 other Party a change of address to which all notices and other communications shall be sent.

15 **10. Counterparts; Facsimile Signatures**

16 10.1 This Consent Judgment may be executed in counterparts and by facsimile or  
17 exchange by electronic means, each of which shall be deemed an original, and all of which, when  
18 taken together, shall constitute one and the same document.

19 **11. Post Execution Activities**

20 Cheng agrees to comply with the requirements set forth in California Health & Safety  
21 Code §25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
22 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
23 furtherance of obtaining such approval, Cheng agrees to employ his best efforts, and those of his  
24 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of this  
25 Consent Judgment in a timely manner.

26 **12. Modification**

27 This Consent Judgment may be modified only by further written agreement of the Parties.  
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**13. Attorney Fees**

A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

**14. Authorization**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party and legally bind that Party.

**15. Warranties and Representations Regarding Other Potential Claims**

Cheng and his attorneys, Sy and Smith, PC, represent and warrant that neither of them is aware of any other actual or potential action, violation, or claim against GREAT STAR or any of the Releasees. Cheng and his attorneys, Sy and Smith, PC, agree, represent and warrant that neither of them shall, themselves or by assisting others, file a notice or pursue a claim against GREAT STAR or any of the Releasees for alleged violation of Proposition 65 for a period of two (2) years from the Effective Date herein.

**IT IS SO STIPULATED:**

Dated: October 11, 2016

Dated: \_\_\_\_\_

By: 

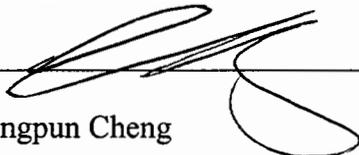
By: \_\_\_\_\_

Parker A. Smith, Attorney for Plaintiff

James M. Mabon, Attorney for Defendant

Dated: 2016-10-13

Dated: \_\_\_\_\_

By:   
Kingpun Cheng

By: \_\_\_\_\_

Hangzhou Great Star Industrial Co., Ltd.

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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Parker A. Smith, Attorney for Plaintiff

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Kingpun Cheng

Dated: September 26, 2016

By: [Signature]

James M. Mabon, Attorney for Defendant

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Hangzhou Great Star Industrial Co., Ltd.

13. Attorney Fees

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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Parker A. Smith, Attorney for Plaintiff

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Kingpun Cheng

Dated: September 26, 2016

By: [Signature]

James M. Mabon, Attorney for Defendant

Dated: Oct. 8, 2016

By: [Signature]

Hangzhou Great Star Industrial Co., Ltd.

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**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_

Judge of the Superior Court